

THE JOINT ETHICS
REGULATION (JER)
and
TITLE 32 MEMBERS

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Outline of Events

- What is the JER?
- Does it apply to the ANG? How?
- Conflicts of Interest

The JOINT ETHICS REGULATION

- Consolidated set of ethical rules authored by DoD in 1993
- Ethics before 1993
 - Each federal agency had its own set of rules
- Point of Confusion
 - OGE published its own “Standards of Conduct” (applied to officers and civilians) which were later reprinted in JER

Does the JER apply to Title 32 ANG members?

- Short answer: “yes”
- Watch out for the big “but”
 - Subsequent numbered changes to the JER limit the applicability of various sections to Title 32 members

DoD Policy

- JER, ¶ 1-300(B) indicates sections that apply and sections that are exempted
- Applicable sections
 - Financial disclosures
 - OGE's Standards of Conduct (gifts, conflicts, outside employment and activities, misuse of position,)
 - Training
- Exemptions
 - Certain criminal statutes*

Conflicts of Interest

- Policy: public service is a public trust
- Most obvious conflicts:
 - Bribery and action against U.S.
- 2 conflict rules
 - Basic Conflict
 - Impartiality
- Exceptions
- Remedies

Basic Conflicts Rule

- Member cannot work for the government on a particular matter affecting his/her financial interests.
 - “Particular matter” involves action focused on interests of specific person/group
 - “His/her financial interests” includes those of the member, spouse, minor child, business partner, organization where member serves/is negotiating future employment.

The Impartiality Rule

- A member may not work for the government on a particular matter if
 - (1) he/she knows another person who will be financially affected by the matter or represent a party to the matter, and
 - (2) the member's own impartiality would reasonably be questioned

The Impartiality Rule (cont.)

- The other “person” is one with whom the member has the following relationship
 - Personal- resides with, friends, blood relative
 - Business- beyond just normal consumer
 - Organizational- beyond just membership
 - Employment-member or parent/spouse/child has/is seeking job/has worked for in last year

The Impartiality Rule (cont)

- A member's own impartiality is reasonably questioned when a "reasonable person who knows the relevant facts" would question the member's impartiality in the matter.

Exceptions & Remedies

- Exception:
 - member has a conflict, but not necessarily barred from further action (e.g. diversified mutual fund)
- Remedies
 - Disqualification
 - Transfer to new position
 - Divestiture of asset
 - Resignation from outside position

Common Pitfalls

- Failure to recognize areas of danger in which conflicts can occur
- Failure to avoid the appearances of impropriety
- Failure to take prompt remedial action when necessary

QUESTIONS/COMMENTS
/
CONFUSION?

